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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

Docket No. 71-449

VAN MARK PRODUCTS CORPORATION and
EUGENE VAN CLEAVE,
Petitioners,
vs.
TAPCO PRODUCTS COMPANY,
Respondent.

PETITIONERS' SUPPLEMENTAL BRIEF

Pursuant to Rule 24(5), Petitioners call to the Court's attention a relevant "intervening matter" which arose *after* the filing of the Petition for Writ of Certiorari. More specifically, the Court's attention is directed to the District Court's recent "Finding Modifying Injunction to Conform with Sixth Circuit Court of Appeals' Decision", dated October 21, 1971 (see attached Supplemental Appendix, p. 1b).

The "intervening matter" arose as follows:

The Sixth Circuit Court of Appeals issued its mandate to the District Court on September 23, 1971. Then Plaintiff (Respondent here) presented to the District Court, ex-parte, a Judgment and Writ of Injunction. The Judgment was entered on September 27, 1971 (Supplemental

Appendix, p. 14b) and the Writ of Injunction was entered on October 1, 1971 (Supplemental Appendix, p. 17b).

On October 7, 1971, Defendants (Petitioners here) moved for an Order modifying the Judgment and Writ of Injunction (Supplemental Appendix, p. 11b). Hearing on this Motion, including the taking of the testimony, was held on October 18, 1971.

The District Court granted this Motion and entered its "Order Modifying Judgment" on October 21, 1971 (Supplemental Appendix, p. 10b), along with its above mentioned "Findings" (see Supplemental Appendix, p. 1b).

Respondent's Brief in Opposition to the Petition, served on October 28, 1971, makes no mention of and contains no reference to the above matter, nor to such "Findings".

The relevance of these recent "Findings" to the Petition is that the very witness, Youngdahl, upon whose testimony the Court of Appeals solely relied in reversing the District Court, now validates the District Court's original (reversed) Finding of no new function.

At trial, the District Court faced the choice of believing Plaintiff's expert Youngdahl's oral testimony that there was a new function* or believing what the Court personally observed during a Courtroom demonstration of the patented bending brake, namely, no new function (i.e., no hinge support during bending). The District Court resolved the conflict by adopting its own observations and rejecting the conflicting testimony of the witness.

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* The Court of Appeals summarized Youngdahl's testimony (see Petition Appendix, p. 16a) as follows: "The thrust of Youngdahl's testimony was that great additional support was given by the hinge during bending, particularly in its final stage."

The Court of Appeals reversed, resolving the conflict by adopting Youngdahl's testimony and rejecting the District Courts' observations.

Now, at the Hearing on the above Motion to modify the Injunction, Youngdahl eliminated the conflict altogether, by agreeing with the District Court's original Finding of no new function, that is, by now testifying and demonstrating that the Marsh patent brake hinge does *not* support the sheet metal at any time during bending, including at the final stage (see District Court's Finding, attached Appendix, p. 9b).

We submit that this corroborates Petitioner's contention raised by the Petition, namely, that the Court of Appeals erred under Rule 52(a) in substituting its Judgment for that of the District Court, as to the weight to be given the Trial Testimony of Youngdahl and in reversing the District Court's Finding of no new function.

Respectfully submitted,

CULLEN, SETTLE, SLOMAN
& CANTOR
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Attorneys for Petitioners

Dated: November 2, 1971

SUPPLEMENTAL APPENDIX

IN THE

District Court of the United States

For the Eastern District of Michigan
Southern Division

Tapco Products Company,
Plaintiff,

vs.

Van Mark Products Corporation and Eugene Van Cleave,
Defendants

Civil No. 31627

FINDINGS MODIFYING INJUNCTION TO CONFORM WITH SIXTH CIRCUIT COURT OF APPEALS' DECISION

The matter before the Court at this time is Defendant's Motion to Modify the Judgment entered September 27, 1971 and the Writ of Injunction issued by this Court pursuant thereto, on October 1, 1971. Defendants contend that the Writ of Injunction departs from the recent Court of Appeals' Opinion of July 12, 1971 concerning this case and that because plaintiff has used such Writ of Injunction in customer contacts as a sales tool, the Writ of Injunction should be clarified as to what defendants are permitted to make and sell, as well as what is restrained. In accordance with the facts found below, this Court agrees and grants the Motion.

As background to this Motion: Following the initial trial, this Court found claims 1-7 of Plaintiff's Marsh Patent No. 3,161,223 invalid for "obviousness" over the prior art (see Opinion dated July 28, 1970). At that time, this Court made no Findings as to the subject of infringement, the same not appearing to be necessary under the circumstances. Plaintiff appealed as to Claim 7 only, and the Court of Appeals for the Sixth Circuit reversed, finding Claim 7 valid and infringed. (See Opinion dated July 12, 1971). The case was remanded for further proceedings by this Court. Accordingly, this Court entered the above Judgment, which was presented to it by plaintiff and which is the subject of the present Motion.

Relevant to this Motion, the Court of Appeals found Claim 7 to be valid, because the flat topped integral hinge of the Marsh patent brake supports the sheet metal during bending, particularly at the full 90° bend, thereby producing a better bend than the prior art brake round topped piano-type hinge which was separately fastened by screws or bolts. The Court of Appeals agreed with this Court that the integral hinge itself was "obvious" and not patentable, but found invention in that:

> "Plaintiff has combined the old art piano-type integral hinge with a new type *'flat, gapless' hinge* not known to the prior relevant art in such a way as to create a new, better and unsuspected result. *The Marsh hinge provides greater support* and prevents the sheet metal from slipping into a 'gap' and thus prevents non-uniformity and marring." [Emphasis added].

The Court of Appeals further stated:

> ". . . it seems fairly clear that if there is no functional improvement made by the flat-topped hinge,

> then the mere use of an integral piano-type hinge would be obvious and it was so considered by the Patent Examiner. If, however, the flat-topped hinge is a functioning improvement to the prior art then it would be patentable . . . "

Thus, the nub of patentability was the Court of Appeals finding, reversing the Finding of Fact of this Court, that the flat topped hinge supports the sheet metal during bending. The Court of Appeals based its Finding of hinge support solely upon the testimony of plaintiff's expert witness, Dr. Youngdahl. After quoting testimony of Youngdahl to the effect that the Marsh patent brake hinge supports the sheet metal during bending, the Court of Appeals summed up his testimony as follows:

> "The thrust of Youngdahl's testimony was that great additional support was given by the hinge during bending, particularly in its final stage . . . "

In adopting the testimony of Professor Youngdahl for the basis of its findings, the Court of Appeals ignored the fact that this Court, as the finder of fact, is the sole judge of the weight to be given to the testimony of an expert witness. Moreover, the Appellate Court also ignored the fact that this Court had placed great reliance on the courtroom hinge demonstrations which it had personally observed. After viewing the demonstrations of the hinges, this Court, unlike the Reviewing Court, gave little weight to Younghahl's testimony, or to the findings of the professor's out-of-court tests. Youngdahl's testimony was, in short, contrary to what this Court observed.

So much for the background; this Court must, and here does, follow the Court of Appeals' opinion. The Court notes, however, that the testimony and demonstrations

in connection with this Motion clearly show that in the operation of the Marsh brake hinge, just as in the case of the prior art brake, the hinge does *not* support the sheet metal during bending.

Having found validity, the Court of Appeals clearly delineated the scope of the patent claim first, by references to the fact that the Patent Office "Examiner allowed Claim 7 *only* because it described the top surface of the hinge as being flat and lying within the plane of the corresponding member surfaces". Thus, the Court of Appeals' Opinion instructs this Court that the patent claim covers only hinges whose top surfaces are both flat and lie within the plane of their corresponding members.

Second, the Court of Appeals specified those hinges which are excluded from the scope of the patent claim in the following statement:

> "Defendants could easily have avoided liability by choosing any one of many alternatives to copying the Marsh brake. Among these alternatives, Defendants could have continued to use the prior art Rauen brake; they could have welded a Rauen-type hinge onto the members for greater hinge stability; or they could have used an extruded integral hinge of any design which did not adopt Plaintiff's teaching to position the surface of the hinge projections flush with the plane of their corresponding member surfaces."

Thus, rounded top hinges, as were used in the prior art Rauen brake, even if extruded integral are excluded from the patented Claim 7.

Third, the Court of Appeals made it plain that the patented invention was confined to hinges which do in fact

function to support the sheet metal during bending, since in the absence of that function, the Court of Appeals stated that the hinge would be unpatentably "obvious".

Defendants' Motion asks this Court to follow the Court of Appeals' opinion and pursuant thereto modify the Injunction against making or using or selling structures defined in Claim 7 by adding words to the effect that the Injunction does not apply to and does not prohibit the manufacture or sales or use by defendants or their customers of bending brakes whose hinge projections do not support the sheet metal during bending, nor to bending brakes whose hinge projections top surfaces are not flat and gapless, or not lying in the plane of the upper surfaces of their corresponding members.

In support of their Motion, defendants offered the courtroom testimony of defendant Van Cleave, an officer of defendant Van Mark, and also offered the testimony of Professor Youngdahl who was subpoenaed as an adverse witness. Van Cleave testified as to plaintiff's use of the present writ of injunction as a "sales weapon" as demonstrated by a statement plaintiff made to one of defendant's principal customer's alleging that defendants are prohibited by Court injunction from selling any bending brakes.

In the opinion of this Court Mr. Van Cleave's testimony demonstrates the need of judicial intervention for purposes of clarifying this Court's injunction and in order to clearly inform laymen-customers that only certain brakes are prohibited as a result of the finding of infringement. The decision of the Sixth Circuit Court of Appeals clearly entitles the defendants to sell, and the public is entitled to buy, brakes which are outside the scope of the patented Claim 7.

Van Cleave also demonstrated six bending brakes to this Court, including three recent models of the defendants, which are as follows: The first (Exhibit A) has flat-topped hinges but with a plastic strip positioned on the outboard edge of the bending member so that the hinge tops are not in the plane of said bending member.

The second (Exhibit B) and third (Exhibit C) each have the same plastic strip, but the second has one set of integral hinge projections rounded, rather than flat, and the third has both sets of integral hinge projections rounded. Van Cleave operated these brakes for the Court and demonstrated to the Court that in none of these brakes do the hinge projections support or contact the sheet metal at any time during bending, including at or near the final stage of the bend. Youngdahl agreed with Van Cleave, repeating the brake operation demonstrations for the Court, and agreeing that none of these brakes embody the inventive hinge support of the sheet metal during bending and that none include the flat topped hinge surfaces lying in the planes of their corresponding members. Thus, the Court finds these brakes to be outside the scope of patent Claim 7 and finds that they do not utilize the patent invention, having neither the hinge support function, nor flat hinge tops lying in the planes of their corresponding members.

Van Cleave further operated and demonstrated to the Court that the brakes of Trial Exhibits 4 (defendant's brake), 18 (the prior art piano-type hinge brake) and 19 (the Marsh patent brake). He demonstrated and testified, and this Court took special care in observing this, that in none of these brakes do the hinges support the sheet metal at any time during bending, including at or near the final stage of the complete 90° bend. In short, he demon-

strated, and the Court so finds, that in all the physical exhibits, Nos. 4, 18 and 19, as well as the above Hearing Exhibits A, B, and C, the hinges function in exactly the same way during the bending operation, that is, at all times each of the hinges of each of the Exhibits are well spaced away from and do not contact or support the sheet metal at any time during the bending up to and including the final stage and that all operate like the prior art piano hinge brake of Exhibit 18 with respect to neither contacting nor supporting the sheet metal during bending.

He demonstrated, and the Court finds, that the sharpness and straightness of the bend in all of the above brakes, regardless of the hinge style or shape, depend upon the sharpness and straightness of the anvil edge about which the metal is bent, and are not dependent upon the shape or style of the hinge. Van Cleave further testified, and this Court finds as fact, that the utility of the integral hinges which defendants use are their strength, appearance, avoidance of screws and bolts, and ease of assembly. None (i.e. the hinges) support the sheet metal during bending.

This Court also heard and observed the Courtroom testimony and demeanor of Professor Youngdahl. His testimony initially seemed to confiict with that of Mr. Van Cleave, which the Court felt was credible and convincing. However, the Court is of the opinion, and so finds, that Professor Youngdahl's objections and exceptions to the hinge demonstrations were unconvincing, and more important, irrelevant to the patent claim and concept that forms the subject of this litigation.

This Court does not rely upon Professor Youngdahl's statements because of what this Court personally observed to be a fact in connection with the physical mani-

pulations of the brakes. More specifically, Youngdahl testified that the Marsh patent brake, Exhibit 19, does *not* support the sheet metal at any time during bending and that the sheet metal is spaced from the hinge at all times during bending including at the final stage. He made the same statements as to defendants' recent brakes, Exhibits A, B, and C. The Court accepts this testimony and finds this to be fact, because the Court saw this itself, apart from hearing Van Cleave's confirming testimony and demonstrations.

However, Youngdahl also testified that the prior defendants' brake (Exhibit 4) will support the sheet metal at the final stage of bending *if* the anvil is "properly adjusted" relative to the thickness of the particular piece of sheet metal being bent as well as relative to the hinge. Absent such an adjustment, he admitted that the hinge does not support the sheet metal at any time during the bending.

This Court rejects Youngdahl's testimony as to the hinge support *if* the anvil is adjusted relative to the thickness of the sheet metal, first, because none of the brakes have any means for adjusting the anvil relative to the thickness of the sheet metal, which thickness obviously may vary, indicating that no such adjustment is contemplated. Second, *no such adjustment means or concept is found anywhere in the patent or in the patent claim.* Third, the geometry of the brake parts, meaning the location of the hinge relative to the anvil edge, bending member and clamping or table member precludes such hinge support of the sheet metal, in a normal or commercial brake construction. Thus this Court finds from the testimony and its observations that Youngdahl's theory of anvil adjustment is irrelevant and rejects his testimony.

Having observed again the operation of the Marsh patent brake (Exhibit 19), this time demonstrated by Van Cleave, and personally seeing again that at no time does the hinge support the sheet metal during bending and that at all times, including at the final stage of the full bend of 90°, the hinge is well spaced from the sheet metal, and having heard even Youngdahl now admit this to be true, and having observed Youngdahl demonstrate this to be true, this Court cannot help but find that the Marsh patent hinge does not operate or function any differently than the prior art brake hinge with respect to the relevant absence of hinge support during bending.

Nevertheless, the Court of Appeals having found the patent valid because of the inventive hinge support, this Court must and hereby does follow its mandate. However, fairness and equity to the defendants,* as well as to the public which is entitled to have available to it bending brakes which are not within the scope of a valid patent claim, see *Lear v. Adkins,* (1969) 395 U.S. 653, requires this Court to modify the Writ of Injunction and the Judgment to specifically exclude therefrom any brakes of defendants wherein the hinges do not support the sheet metal during bending or wherein the hinge projection tops are not flat and do not lie within the plane of the corresponding brake members.

Thus, defendants' Motion is granted. This Opinion shall be considered as the Findings of this Court made in accordance with Rule 52(a) F.R.C.P.

Fred W. Kaess
United States District Judge.

Dated: October 21, 1971.

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* Rule 60 (B) (5) and (6) F.R.C.P.

ORDER MODIFYING JUDGMENT

At a session of said court held in the Federal Building in the City of Detroit, Michigan, on the 21st day of October, 1971.

Present: The Honorable Fred W. Kaess, United States District Judge.

On hearing before this Court on October 18, 1971, on defendants' Motion for Modification of Judgment and Writ of Injunction, the Court having heard oral testimony and having observed demonstrations of and heard oral testimony regarding the operations of defendants', plaintiff's and prior art brakes, and having heard oral argument by counsel, and having found that the Writ of Injunction entered October 1, 1971, has been shown by plaintiff to defendants' customers and therefore should be modified to clarify the scope of the Injunction to better conform to the opinion of the Court of Appeals for the Sixth Circuit entered July 12, 1971, and having further found that none of defendants' brakes, past as well as present ones, include hinges whose tops support the sheet metal at any time during bending, and that none of defendants' present model brakes include hinges which are both flat and lie in the plane of their corresponding members and hence, do not embody the invention of Patent No. 3,161,223, Claim 7-in-suit;

It is Hereby Ordered:

1. Defendants' Motion for Modification of Judgment and Writ of Injunction is hereby granted.

2. The Writ of Injunction entered October 1, 1971, and the Judgment entered September 27, 1971 are hereby modified by adding the following clause thereto:

"This injunction does not apply to and does not prohibit the manufacture or sales or use by Defendants or their customers of bending brakes whose hinge projections do not support the sheet metal during bending, nor to bending brakes whose hinge projection tops are not flat, gapless and lying in the planes of the upper flat surfaces of their corresponding member."

Fred W. Kaess
United States District Judge

DEFENDANTS' MOTION FOR MODIFICATION OF JUDGMENT AND WRIT OF INJUNCTION AND BRIEF IN SUPPORT

Defendants hereby move for modification of the Judgment entered September 27, 1971, and the Writ of Injunction issued October 1, 1971, by adding the following clause thereto:

"This injunction does not apply to and does not prohibit the manufacture or sales or use by Defendants or their customers of bending brakes whose hinge projections do not support the sheet metal during bending, nor to bending brakes whose hinge projections are not flat, gapless, flush and integral with the flat tops of the surfaces of their corresponding members."

LOCAL RULE 9

Defendants' counsel have asked Plaintiff's counsel to agree to the grant of the above motion, but Plaintiff's counsel has refused.

BRIEF IN SUPPORT OF MOTION

The Opinion of the Court of Appeals found that the Marsh patent inventive feature is that the flat, gapless, flush hinge tops support the sheet metal during bending. The Court found that such hinge support of the sheet metal is a "new, better and unsuspected result" and based its finding of validity of Claim 7, the only claim on appeal, upon that idea.

The Court of Appeals specifically found that in the absence of such "utility" (meaning hinge support of the sheet metal during bending), by the flat, gapless, flush hinge feature, the patented claim would be "obvious" and thus not patentable.

Consequently, it is manifest from the Court of Appeals Opinion, that hinges which do not provide such "utility" (hinge support of sheet metal during bending) should be excluded from the scope of the patent and consequently, the scope of the injunction.

In addition, the Court of Appeals expressly exempted from the scope of the patent (and hence from any injunction thereon) any hinges which are round topped (Rauen prior art patent), whether of the integral or screw-on types, or which otherwise are not flush with the corresponding member surfaces.

The Writ of Injunction and the Judgment in this case were presented to the Court without first clearing them with Defendants' counsel. They were not served upon Defendants' counsel or notified to them in any way until October 1, 1971.

As the Court will recognize, the fact of business life is that a Writ of Injunction of this type is a sales weapon

which we can all anticipate will be exposed to customers and potential customers. Since customers are not patent lawyers and are not knowledgeable of the Court of Appeals Opinion, we anticipate customer confusion with reluctance to buy brakes of any kind from Defendants. To avoid such problems, and in fairness to both sides, the Writ of Injunction should clearly spell out that the customers do have the right to purchase and use brakes whose hinges do not support the sheet metal or whose hinges are not flat, gapless or flush. Since that follows the Opinion of the Court of Appeals, the Injunction and Judgment on their faces should be clarified to conform therewith.

The wording of the Writ of Injunction and the Judgment is not academic. Defendant is now selling and offering for sale bending brakes whose hinges have rounded tops which do not support the sheet metal during bending. Thus, the injunction, following the dictate of the Court of Appeals, should on its face notify the public that such type hinges are permissible and that the public is free to purchase and use brakes having hinges which do not support the sheet metal during bending or whose tops are rounded.

Wherefore, we respectfully request this Court to modify the Judgment and the Writ of Injunction in accordance with the Opinion of the Court of Appeals. In support of this Motion, Defendant will offer brief testimony at the hearing as to the relevant facts.

Respectfully,

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(313) 964-0400
Attorneys for Defendants

PROOF OF SERVICE

A copy of the foregoing was mailed to Barnes, Kisselle, Raisch and Choate, Attorneys for Plaintiff on this 7th day of October, 1971.

Bernard J. Cantor

JUDGMENT

A notice of appeal having been filed in this patent infringement suit on August 28, 1970, the United States Court of Appeals for the Sixth Circuit having decided on July 12, 1971 that claim 7 of Marsh United States Patent 3,161,223 issued on December 15, 1964 on a Sheet Metal Brake is valid and also infringed by defendants, defendant's Petition for Rehearing having been denied on August 30, 1971, and defendants' motion for Stay of Mandate Pending Application for Certiorari having been denied and immediate issuance of the mandate being ordered on September 20, 1971, and there being no just reason for delaying ordering of the following injunctive relief, and such relief having been requested by plaintiff; it is hereby Ordered, Adjudged, and Decreed:

1. This court has jurisdiction over the plaintiff, Tapco Products Company, Inc., which is a Michigan Corporation having its offices and principal place of business at 9240 Hubbell Ave., Detroit, Michigan 48228, over the defendant Van Mark Products Corporation, which is a Michigan Corporation having an office and place of business at 18235 Weaver, Detroit, Michigan 48228 and Eugene Van Cleave who resides at 24530 Lyndon, Detroit, Michigan 48239, and over the subject matter in issue.

2. Tapco Products Company, Inc., is the owner of the entire right, title and interest in and to the Marsh United States Letters Patent No. 3,161,223 issued December 15,

1964 and is entitled to bring suit thereon for patent infringement.

3. That a permanent injunction shall issue out of and under the seal of this Court directed to said defendants Van Mark Products Corporation and Eugene Van Cleave, their officers, agents, servants, employees, attorneys, and all persons, companies, firms, and corporations, claiming by, through, or under such defendants, or either of them, or in active concert or participation with them, or either of them, or under their authority, who receive actual notice thereof, permanently restraining and enjoining defendants and each of them:

(A) From making, using, or selling directly or indirectly, until and including December 15, 1981, brakes for bending sheet metal, or parts thereof intended and designed to be assembled as brakes for bending sheet metal, which are described in claim 7 of said United States Letter Patent No. 3,161,223, and from further infringing claim 7 of said Letters Patent by the manufacture, use, or sale of brakes for bending sheet metal embodying the invention set forth and included in said claim 7, which reads as follows:

> In a brake for bending sheet metal, the combination comprising a first member having a flat clamping surface, an anvil member for clamping a piece of metal against said flat clamping surface on said first member, a second member having a flat bending surface, each of said first and second members having substantially the entire length of the longitudinal edges thereof formed with longitudinally spaced intermeshing integral projections, each said projection of each said member having a surface thereof lying in the plane of the flat surface of its corresponding member, said projections having aligned openings therein, and a hinge

pin extending through said integral projections and thereby defining a hinge so that said second member may be swung relative to said first member to bend said metal about said anvil member.

(B) and from making, using and selling, directly or indirectly until and including December 15, 1981, brakes for bending sheet metal, or parts thereof intended and designed to be assembled as brakes for bending sheet metal, which are exemplified in Plaintiff's Exhibits 4 and 22.

4. That this court retain jurisdiction to determine damages adequate to compensate plaintiff for the infringement of claim 7 of said Letters Patent together with interest as may be fixed by this Court, to determine whether such damages should be increased up to three times the amount found or assessed pursuant to title 35 Section 284, to determine whether reasonable attorney fees should be awarded to plaintiff pursuant to title 35 Section 285, to hear and determine the unfair competition, contract, and other issues alleged in counts II, III, and IV of plaintiff's complaint and to hear and determine all other issues in this case not expressly determined by this Judgment.

5. That the Counterclaim of defendants be and hereby is dismissed with prejudice.

Entered this 27th day of September, 1971.

Honorable Fred W. Kaess
United States District Judge

WRIT OF INJUNCTION

To the defendant Van Mark Products Corporation, a corporation of Michigan having a place of business at 18235 Weaver, Detroit, Michigan 48228, and the defendant Eugene Van Cleave, residing at 24580 Lyndon, Detroit, Michigan 48239, and to their officers, agents, servants, employees, attorneys, and to all persons, companies, firms, and corporations claiming by, through or under such defendants, or either of them, or in active concert or participation with them, or either of them, or under their authority who receive actual notice of this Writ of Injunction.

Whereas, by judgment entered by this court on September —, 1971 it appears that Marsh United States Letters Patent No. 3,161,223, issued December 15, 1964 on a sheet metal brake is valid and infringed by said defendants and by said judgment it was ordered that an injunction issue out of and under the seal of this Court against the defendants restraining against further infringement;

Now, Therefore, we do hereby command and strictly restrain and enjoin you, the said Van Mark Products Corporation, and the said Eugene Van Cleave, and their officers, agents, servants, employees, attorneys, and all persons, companies, firms, and corporations claiming by, through, or under said defendants, or either one of them, or in active concert or participation with them, or either of them, or under their authority who receive actual notice of this Writ of Injunction:

(a) From making, using, or selling directly or indirectly, until and including December 15, 1981, brakes for bending sheet metal, or parts thereof intended and designed to be assembled as brakes for bending sheet

metal, which are described in claim 7 of said United States Letters Patent No. 3,161,223, and from further infringing claim 7 of said Letters Patent by the manufacture, use, or sale of brakes for bending sheet metal embodying the invention set forth and included in said claim 1 which reads as follows:

> In a brake for bending sheet metal, the combination comprising a first member having a flat clamping surface, an anvil member for clamping a piece of metal against said flat clamping surface on said first member, a second member having a flat bending surface, each of said first and second members having substantially the entire length of the longitudinal edges thereof formed with longitudinally spaced intermeshing integral projections, each said projection of each said member having a surface thereof lying in the plane of the flat surface of its corresponding member, said projections having aligned openings therein, and a hinge pin extending through said integral projections and thereby defining a hinge so that said second member may be swung relative to said first member to bend said metal about said anvil member.

(b) And from making, using and selling, directly or indirectly until and including December 15, 1981, brakes for bending sheet metal, or parts thereof intended and designed to be assembled as brakes for bending sheet metal, which are exemplified in Plaintiff's Exhibits 4 and 22.

Which commands and injunction you are respectively required to observe and obey. Hereof fail not, under penalty of the law thence ensuing.

Issued at Detroit, Michigan, this 1st day of October, 1971 in accordance with said Judgment of this Court signed by the Honorable Fred W. Kaess, Judge of the United States District Court for the Eastern District, Southern Division of Michigan, on the 27th day of October, 1971.

Frederick W. Johnson
Clerk
By: E. James Chaffee
Deputy Clerk